88-552 (1)

Case No. _____

FILED
MAY 9 1988
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

1988-89 Term

Robert John Arko,

Plaintiff-Appellant,

v.

The United States Department of the Air Force; The School of Education, University of Colorado; The School of Law, University of Colorado; The American Bar Association; The Association of American Law Schools; The Law School Admission Council; and, The Law School Admission Services, Inc.,

Defendants-Appellees.

Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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Robert John Arko

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Questions Presented by this Appeal

1. Should the American Bar Association (ABA) and the Association of American Law Schools (AALS) be required to respond to the original complaint and subsequent filings (a) in the district court? (b) in the court of appeals? or, (c) in this court? 861103, I 18-19 I; and 870727, I 77 I.[1]

2. Does a request that an individual student leave an educational program supported by state and federal funds require due process protections guaranteed by Amendment Five of the Constitution of the United States of America? 880223, I 3-4 I; 860902, I 5-9 I; 870527, I63-64 I, question 4; and 17870917, I 92-93 I.

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[1] Unless otherwise noted, citations are to the Joint Appendix Prepared by the Appellant. Each reference is to the Document Number in the Table of Contents and the bracketed I X I Page Number in the Joint Appendix. The title of each document is provided in the Joint Appendix Table of Contents, but not in the notes to this Petition.

3. Does the applicant for admission to a college educational program have a right to due process of law when he is denied admission without specific cause? 860902, I 5-6 I, number 8; 870626, I 76 I, 870806, I 89-90 I; and 17870917, I 92-93 I.

4. Is it desirable and/or equitable to have a unitary legal education system closely associated with a unified legal profession that combine to screen entry into law related training and employment opportunities? 860902, I 6-8 I, numbers 9 and 10; and 870806, I 84-86 I.

5. When public information is inadequate to support or reject a position, is it acceptable to limit a request for relief to a demand for due process and publication of the information derived from that process? 860902, I 8-9 I, numbers 11,12,13, and 14; 861105, I 23 I, number 4; 870409, I 41-43 I, numbers 9, 10, 11, and 12; 870806, I 81 I; and 17870917, I 92-93 I.

6. Are private parties closely associated with state agents imune from compliance with the due process provisions of our Constitution? 861103, I 19-21 I; and 17870917, I 92-93 I.

7. Is it necessary for a pro se litigant to assert that his rights to life, liberty, property, and the pursuit of happiness (adequate food, clothing, shelter, and education) have been restricted to make a private claim under our anti-trust laws? 861103, I 21-22 I; 870727, I 77-79 I; and 870806, I 87-90 I.

8. Is an individual's right to choose a particular military service and type of arms guaranteed by the First and Second[2] Amendments to our Constitution? 861118, I 23-24 I; 870527, I 63-64 I, number 4; and 17870917, I 92 I.

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[2] On one or more occasions the appellant has referred to Amendment Three when he should have referred to Amendment Two. 870527, I 63-64 I, number 4.

9. Is the appellant's request for due process "unprecedented" or the reassertion of a dormant rule of common law evidenced in the biography of Paul of Tarsus? 861118, I 24 I; 870727, I 79 I; and 17870917, I 92-93 I.

10. Is it possible to seperate a claim for due process in civil cases from the problem of minority rights and equal protection of the laws for identifiable ethnic groups? 861118, I 25-27 I; and 17870917. I 92-94 I.

11. Should the precedent set in Board of Curators of the University of Missouri v. Horowitz, 98 S.Ct. 948 (1978), be limited to cases involving dismissals from medical schools for lack of cleanliness? 861118, I 27-30 I.

12. Is it within the discretionary powers of a district judge or a court of appeals to define adequate relief? 880223, I 1-5 I; 860902, I 8-9 I, numbers 11, 12, 13, and especially 14; and 861118, I 30-31 I.

13. Does the individual citizen have a right to a yearly physical examination, and non-military physical counseling and training to prepare his/her mind and body for military service after age 18? (a) In grade school? (b) In junior high school? (c) In high school? (d) In college? (e) In a private or parochial school? 861209, I 31-32 I.

14. May the individual claim protection "under the eagle's wing" when in controversy with a state or its agents? 861209, I 32-37 I.

15. Have the governments of the various states and/or the federal government assumed the right to direct the upbringing of minor children? 861227, I 37-40 I.

16. Given their close association with law schools receiving state and federal support, have the Law School Admission Council (LSAC) and the Law School Admission Services, Inc. (LSAS) become state agents? 861217, I 40-41 I.

17. Letters presented in evidence in 870409, I 44-48 I, clearly indicate that any or all aspects of the appellant's character may be called into question. Given the fact that the defendants have failed to provide adequate reasons for their past actions, is this evidence irrelevant? 870417, I 48-49 I, note 1.

18. Is it acceptable within the jurisdiction of this court for a private citizen with little or no legal training to ordain and establish himself as court clerk, prosecutor, judge and jury? 870424, I 50-52 I; and 870512, I 52-59 I.

19. Can the appellant, or one of his immediate relatives, be held accountable for irregularities in the probate of his grandparents' estate in Colorado courts more than forty years ago? 870527, I 59-62 I.

20. Is it acceptable within the jurisdiction of this court for an individual to be indirectly associated with the crime of forgery while he is denied due process of

law? 870512, I 57 I, number 14; and 870527, I 62 I.

21. Does the final paragraph of Article One, Section Eight of our Constitution give the Congress the authority to restrict enumerated civil liberties, like due process, with statutes of limitation? 870527, I 62-63 I; and 17870917, I 90-91 I.

22. Must exorbitant monetary damages be at issue in constitutional cases? 870626, I 64 I; and I 70-71 I.

23. Which guide for action takes precedence: (a) state statute, (b) federal statute, (c) amendments to the Constitution, or (d) articles of the Constitution? 870626, I 65-68 I.

24. Is it within the discretionary powers of a district judge to waive restrictions like statutes of limitation when a pro se litigant is the weaker party? 870626, I 68-69 I.

25. When the weaker party would not otherwise be heard, should the chief judge

insure that he/she receive judicial notice and representation? 870626, I 69-70 I.

26. Does a citizen have the right to use the First Amendment as a sword to obtain education for the practice of law; and as a shield to actively participate in the production of dramatic presentations that offer a balanced view of his participation in government service? 870626, I 71-76 I. [3]

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[3] This question has broader application to treatment of Supreme Court cases by the legal media. Compare Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968) in Morris, Arval A. The Constitution and American Education: Second Edition. (Saint Paul, Minnesota: West Publishing Company; 1980.) pp. 51-53; with treatment of this case in Lockhart, William B.; Yale Kamisar; Jesse H. Choper; and Steven H. Shiffrin. Constitutional Rights and Liberties: Cases-Comments-Questions; Sixth Edition. (Saint Paul, Minnesota: West Publishing Company; 1986.) (Hereinafter cited as: Lockhart, Constitutional Rights.) pp. 100, 104, 107-111, and 697. In each treatment the distortion is so bad it is not possible to determine what Duncan did to merit the attention of the state of Louisiana.

A variation on this theme appears in Lowy, Joan. "Local: Justice's talk may have violated ethics". Rocky Mountain News. (Denver, Colorado: Denver Publishing Company; May 2, 1987.) pp. 6 and 40.

27. Can actual or implied liberties guaranteed by the Constitution as amended be restricted by state statutes "borrowed" to fill in gaps in federal law? 870227, I 79 I; and 870806, I 86 I.

28. Should each school have its own constitution, including a system of checks and balances on the educational process? 870806, I 81-83 I.

29. If no trial is held and relief is not granted in a civil action, do state legislative acts like statutes of limitation amount to bills of attainder when they are used to limit access to relief requesting due process? 870527, I 62 I; 870727, I 80-81 I; 870806, I 87 I; and 17870917, I 91 I.

30. Does a litigant have an obligation to bring new material to the court's attention, even during the appeal process, if the evidence may be related to the issues before the court? 880223, I 5 I.

Parties to the Proceedings in the Court of Appeals for the Tenth Circuit

All parties listed in the caption of the original complaint and in documents submitted to the Court of Appeals for the Tenth Circuit are listed in the caption of this case in this court.

It was determined in the United States District Court for the District of Colorado that the proper party defendant should be a branch of the military or a federal agency. 870227, I 10 I. In the court of appeals and in this court "The United States Department of the Air Force" has been addressed as the proper party defendant.

The ABA and the AALS did not respond in the district court or the court of appeals. They may have no interest in the outcome of this appeal. Question 1, page 1, above.

It is right and proper, however, that the appellant move this court to request their presence and meaningful response.

For fear of citing one or more cases that may be "inapposite", 861217, I 38 I. reference is made to no specific case to support this position. [4]

Since the 14th Century it has been customary for the judicial district of the plaintiff to be the forum for any complaint. Since the American Revolution, however, it has become a cherished right of defendants to skirt legal action by claiming residence in another judicial district. These rules of law should be retained in tact.

The ABA and the AALS no doubt claim residence in another judicial district. It is the contention of the appellant that the residence of a member of these associations

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[4] The appellant relies on a layman's cursory reading of one or more cases in Cound, John J.; Jack H. Friedenthal; and Arthur R. Miller. Civil Procedure: Cases and Materials; Second Edition. (Saint Paul, Minnesota: West Publishing Company; 1974.) Hereinafter cited as: Cound, Civil Procedure.

The court may request the appellant's comments on any questions it may have regarding material presented in this petition, in the joint appendix, or in any cited authority.

is the residence of the association. That a complaint should be filed by the plaintiff with the national office of one of these associations is appropriate when a clearly recognized representative is not identified in the judicial district of the plaintiff.

In any case, no defending party should be permitted to exercise contempt of court by failing to appear when it is properly served with the original complaint. He should be required to respond by claiming that his residence is outside the jurisdiction of the originating court. Ideally, the case will be transferred to the jurisdiction of the Judicial Panel on Multi-District Litigation for assignment to the proper forum. United States Code, Title 28, Section 1407. Jurisdictional rules would eventually develop and become firm.

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_____. Minute Order. (Denver, Colorado: United States District Court for the District of Colorado; May 21, 1987.) 870521, I 17 I.

Brimmer, Clarence A.; Chief Judge; and Moore and Tacha, Circuit Judges. Order and Judgment. (Denver, Colorado: United States Court of Appeals for the Tenth Circuit; February 23, 1988.) 880223, I 1-4 I.

Jurisdiction of the Supreme Court

Statutory jurisdiction for this court to review the Per Curiam Order and Judgment by the United States Court of Appeals for the Tenth Circuit issued February 23, 1988 is Section 1254 (1), Title 28, United States Code.

Constitutional jurisdiction for this review lies in Article Three, Section Two, of our Constitution. 17870917, I 91-92 I. As noted at pages 22 through 24, the jurisdictional statements in the District Court and the Court of Appeals for the Tenth Circuit should have had a far broader base in the Articles of our Constitution. To rely on federal statute and Article Three is insufficient in this case.

Constitutional Provisions

Constitutional provisions and federal statutes are quoted in this Petition and in the Joint Appendix Prepared by the Appellant, 17870917, I 90-94 I, when they are relevant to the argument presented.

Statement of the Case

The Clerk of the District Court for the District of Colorado accepted the Complaint filed September 2, 1986. 860902, I 5-9 I. Motions and briefs were filed by the plaintiff and one or more of the defendants. 861103 through 870105, I 18-41 I. The district court found that the plaintiff's claims were barred by various statutes of limitation. From March through May 1987 new evidence came to the attention of the plaintiff While refusing to grant a new trial, the District Court did grant leave to appeal to the United States Court of Appeals for the Tenth Circuit. 870227, 870511, and 870521, I 9-17 I; and 870409 through 870512, I 41-59 I.

A number of motions and briefs were filed by the appellant as well as one or more of the appellees. 870527 through 870806, I 59-90 I. The Court of Appeals found that the District Court may not raise affirmative defenses sua sponte when a

complaint is filed pro se, but not in forma pauperis. The opinion of the appellate court further found, however, that the plaintiff's complaint failed to state a federal cause of action. It also rejected the "new" evidence presented by the appellant. The judgment of the district court was affirmed. 880223, I 1-5 I.

The following facts are also "material to the consideration of the questions presented". To date the ABA and the AALS have not given recognition to the questions at issue in this case. (Q. 1) One of the primary reasons for bringing this case to this court is that the information requested in the courts below is not generally available near the residence of the appellant - or he has not been thorough in his search for it. (Q. 5)

Since composing the plaintiff's brief dated 861209, I 31-32 I, the appellant has viewed Full Metal Jacket, a Stanley Kubrick film. While viewing this film the personal

experience of the appellant during basic military training served to under score the very important questions raised in this dramatic presentation. One or more broadcasts by Howard Cossell, an ABC radio sportscaster, on the proper relationship between education and sport also came to mind. In order to perform successfully in combat on the battlefield the individual soldier must have proper mental and physical conditioning from an early age regardless of the character of the school he attends. It must follow that funding for this conditioning and training must be apportioned on a per capita basis regardless of the type of school the student chooses to attend. While the Department of Defense should have the authority to set goals and objectives that each student must meet, each student should have the right to choose any school approved for this training and conditioning. (Q. 13)

A consistent theme in the record is that the appellant has born full

responsibility for each error in judgment that he has made. One or more of the appellees, on the other hand, have ignored their own negligence. They have permitted one citizen to make accusations which they must have believed.(Q. 17) They have sanctioned vigilante law for a period of at least seven years. (Q. 18) They have constructed the laws of the state of Colorado to permit a will to be called into question more than forty years after recognition in probate court. (Q. 19) And, they have permitted criminal accusation without benefit of trial by jury. (Q. 20) Most damaging of all is that they have denied the appellant the right to adequately prepare for his own defense. (Q. 3 and Q. 7) This continuing disregard of their own inadequate performance must be looked on with disfavor by this court.

Index to Federal Questions in the Joint Appendix Prepared by the Appellant

The Joint Appendix Prepared by the Appellant and this Petition are cross indexed.

The Petition refers to the Joint Appendix by using the six or eight digit document number and bracketed I X I page number that make up each reference in the Petition. The "Table of Contents" in the Joint Appendix correlates "Document Numbers", "Document Titles", and leading "Page Numbers".

Basis of Federal Jurisdiction in the District Court and the Court of Appeals

The basis of federal jurisdiction in this case in the court of first instance was summarized in 870626, pp. 1-2:

> ... the plaintiff claimed that the District Court for the District of Colorado had original jurisdiction in this case because the plaintiff resides in the court's jurisdiction and one of the defendants is an agency of the government of the United States. The Department of the Air Force is an agency of the government of the United States, a party to this controversy, and under Article Three, Section Two of the Constitution... subject to the jurisdiction of the Supreme Court. The School of Education and the School of Law in the University of Colorado at Boulder are agents of the State of Colorado and subject to the jurisdiction of the Supreme Court under the same article. The United States District Court for the District of Colorado and the United States Court of Appeals for the Tenth Circuit are both inferior courts to the Supreme Court of the United States and thereby have jurisdiction in this case

under Article Three, Section One of the Constitution.

Section 1331 of the United States Code, Title 28, gives the district court original jurisdiction of all civil actions arising under the Constitution. Title 28, Section 1291 of the ... Code gives the courts of appeal jurisdiction of appeals from all final decisions of the district courts.... Section 85 gives jurisdiction over the State of Colorado to the District Court for the District of Colorado. Appeals from decisions of this court fall under jurisdiction of the United States Court of Appeals for the Tenth Circuit pursuant to Title 28, Section 41 of the United States Code.

This comment is deficient in that it fails to note that the ABA and the AALS are both subject to federal jurisdiction under the Commerce Clause and the Weights and Measures Clause of Article One, Section Eight of our Constitution. 17870917, I 90 I. The following portion of Article One, Section Eight should also have been included in this passage:

The Congress shall have Power To ... provide for organizing, arming, and disciplining the Militia, ... reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress, ...

Each of the defendant-appellees traffics in

interstate commerce, is responsible for establishing and operating a system of weights and measures, and/or may assist in "training the Militia" thereby establishing a nobility based on intelligence in violation of Article One, Section Nine of our Constitution.

Amplified Reasons for Allowing this Writ

The District Court and the Court of Appeals decided very important questions of federal law by ignoring the real issues and basing their decisions on narrow legal points. These problems of federal law have not been, but should be, settled by this court.

A brief comment is required on the ruling by the United States Court of Appeals for the Tenth Circuit. 880303, I 3 I. It reads:

> Plaintiff's complaints against the defendants ... failed to state a claim upon which relief can be granted. ...

The appellant's various claims for relief may be found in the Joint Appendix at

860902, I 8-9 I, numbers 11, 12, 13, and 14; and 870409, I 41-43 I, numbers 9, 10, 11, and 12.

In at least six other cases this court has ruled on the measure of damages under 42 U.S.C. Section 1983. 870626, I 70 I. The sources available to the Supreme Court, as well as to the attornies for the appellees, should give the full text of each of these opinions. [5]

There are three types of remedy: declarative, specific, and compensatory. Declarative relief consists in a court's defining the rights and duties of the parties in a particular legal context. This type of relief is not common and is often limited by statute, but in many cases it is invaluable. [6]

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[5] Lockhart, Constitutional Rights; op. cit.; p. 1143, footnote 1.

[6] The following comment is a summary of Cound, Civil Procedure, "Section C. A Note on Remedies", op. cit.; pp. 18-21.

Specific relief is an order directing conduct. The defendant may be ordered to return a jewel he has taken from the plaintiff, or stop operating a pig farm in a residential neighborhood. Specific relief will be granted only when damages would be completely inadequate.

Compensatory relief requires that the defendant pay a sum certain in money to the plaintiff. The measure for determining the loss sustained when the object in question is 100 shares of General Motors stock, your leg, your reputation, or your peace of mind is different in each case.

In the first prayer for relief, 860902, I 8-9 I, item 11 requests compensatory relief. Item 12 requests specific relief. Item 13 requests a combination of declarative and specific relief. Item 14 gives this court the opportunity to fashion relief of its choice.

In the second prayer for relief, 870409, I 41-43 I, the appellant requests

a combination of both declarative and specific relief in items 9 through 12. Item 13 is now moot.

The six cases cited at 870626, I 70 I, of the Joint Appendix define the measure of compensatory damages in similar cases. The court should be mindful that we still live in a free market economy. The plaintiff-appellant continues to believe that once due process has been achieved and the facts are aired, the free market will make appropriate benefits available.

This court may mold relief to fit its final decision. The appellant, however, continues to be restricted in the demands that he can make by both moral and ethical constraints not applicable to most litigants. The original complaint, 860902, I 5-9 I, was framed in its first editions without reference to actual military service and veteran status. Had one of these early versions been accepted by the District Court the appellant would have been

in a stronger position to request additional relief that any court could grant.

Given veteran status, however, the appellant is obligated to frame relief that is generally applicable to every citizen and has little to no personal benefit attached. In East of Eden John Steinbeck is one step from claiming that a veteran has no preference at bar, or in society generally, based on prior military service. He, in fact, assumes duties and obligations other citizens never know. The appellant favors this perspective. [7]

The individual citizen is obligated, however, to preserve, protect and defend our Constitution whenever it is within his capacity to act. It makes no difference what the status of the individual is when one or more civil liberties are abused. The individual citizen must act within the law when his experiences indicate that one

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[7] Steinbeck, John. East of Eden. (New York: The Viking Press; 1952.)

or more civil liberties are threatened.

The Court of Appeals also found that the appellant's allegations fail to state a federal cause of action. 880303, I 4-5 I. As noted on pages 23 and 24 of this Petition, the appellees are subject to federal regulation under various portions of Article One, Sections Eight and Nine of our Constitution. 17870917, I 90 I.

Conclusion

Following military service the veteran is responsible for safeguarding the reputation of his fallen brothers in arms. He is obligated to assist his former adversary in meeting basic needs. He consequently has a duty to achieve these goals and objectives through legal education for the practice of law, through active participation in the diplomatic service of his country, and by analysing historical events and making a true and correct record of them.

While the events at issue in this case were taking place these responsibilities,

obligations and duties were not recognized. As time passed they were only dimly perceived. Only now as this case comes to court does the appellant realize the great debt he owes these men.

Few of them understood the cause for which they sacrificed their lives on the rim of Asia. Even now we have difficulty defining the right to process as one of the central issues in that conflict. But, in the land of their birth this gift of process is at risk. To demand process in this court for students, for the unborn, and for others who may require it is to espouse their cause.

This case is about elementary liberties we have held dear for more than two hundred years. This court should suggest to the Congress a rule of discipline for mental and physical training prior to military service. It should provide for the reassertion of the right to due process in civil matters for students as well as for others.

It should also mandate congressional regulation of legal education in this society. The right to equal protection of the laws should be more clearly defined.

The rights, duties, obligations and responsibilities of litigants, advocates, and judges in any legal proceeding should be clearly defined. Jurists should be admonished to avoid setting themselves apart as a nobility based on intellect.

It should be established that the individual's primary relationship is with his family, community, county, and state in that order. When all else fails, however, he should be aware that he may always rely on the federal system when each of these other relationships have failed him.

For the foregoing reasons the plaintiff-appellant humbly requests that this Supreme Court of the United States grant this Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit this 25th day of July, 1988.

Signed: Robert John Arko

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Docket Entries

and

Joint Appendix Prepared by the Appellant

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880223 Order and Judgment: United States Court of Appeals - Tenth Circuit

IP. 1I After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.8. The Cause is therefore ordered submitted without oral argument.

Plaintiff appeals the dismissal of his complaint and the denial of his subsequent Rule 60(b) motion. Plaintiff alleges Ip. 2I that numerous state and federal actors deprived him of due process of law by denying him educational opportunities in the Air Force Reserve Training Program, the University of Colorado, and the University of Colorado Law School. Plaintiff also alleges that some of the defendants discriminated against him.

The United States Air Force Reserve Officer Training Program moved to dismiss

on several grounds. The Law School Admission Council and the Law School Admission Services moved to dismiss for lack of personal jurisdiction. The University of Colorado, the Colorado University Law School, and the American Bar Association did not answer the complaint or move to dismiss.

The court dismissed plaintiff's complaint in its entirety as barred by the applicable statute of limitations. No defendant, however, had raised the statute of limitations as a defense. Statute of limitations is an affirmative defense. Fed. R. Civ. P. 8(c). This court has noted that "[g]enerally, it is the duty of the defendant to plead affirmative defenses, and the court cannot raise such defenses sua sponte." Yellen v. Cooper, 828 F. 2d 1471, 1476 (10th Cir. 1987). This court has made an exception to this rule for in forma pauperis complaints. Id. Plaintiff here, however, is proceeding pro se, but not in forma pauperis. Thus, the district court could not sua sponte

dismiss plaintiff's complaint based on the affirmative defense of statute of limitations.

Plaintiff's complaints against the defendants, however, fail to state a claim upon which relief can be granted. Plaintiff's complaint against the Air Force Reserve Officer Training Program Ip. 3I is that a professor of air military science at the University of Colorado asked plaintiff to withdraw from the training program. Similarly, plaintiff's complaint against the University of Colorado is that in 1969, he "was asked to withdraw from the Student Teaching Program offered by the School of Education at the University of Colorado... ITIhe plaintiff did so without comment." The plaintiff complains that these requests were not accompanied by due process protections. However, a "request" that plaintiff leave these programs, without more, did not require due process protections. Moreover, because plaintiff also states that he later

completed the teacher certification program, his prayer for relief as to the University of Colorado, with the possible exception of the request for one dollar in damages, is now moot.

Plaintiff's counts against the University of Colorado Law School include the complaint that unfavorable decisions of the admissions committee cannot be appealed except by reapplying. Plaintiff argues that due process requires a hearing before an impartial third party. Plaintiff further alleges that the Law School's admission process is the same one used by other law schools, and that this process is used by the ABA, the Association of American Law Schools, the Law School Admission Council, and the Law School Admission Services to deprive "Vietnam veterans with low grade point averages and low Law School Admission test scores" admission to law school. Plaintiff contends that defendants' actions deprived him of Equal Protection of the laws and

violated the spirit of the antitrust laws. These allegations do not state lp. 4I a federal cause of action. We accordingly affirm the district court's dismissal of plaintiff's complaint on other grounds.

In his motion under Fed. R. Civ. P. 60(b), plaintiff sought to raise new allegations that "plaintiff's experiences as a student and law school applicant may be related to long-standing rancor over disposition of his grandparents' estate." The district court properly denied this motion.

The judgment of February 26, 1987, and the order of May 11, 1987, of the United States District Court for the District of Colorado are Affirmed.

The mandate shall issue forthwith. *** 860902 Complaint Ip. 2I ***

8. During September 1965 the plaintiff entered the University of Colorado as a pre-law student. While the University of Colorado is the only state supported institution in Colorado offering a law degree, it does

not offer specific courses for pre-law students. During September 1965 pre-law students were instructed that no specific course of study was required for law school admission. Since graduation from the University of Colorado in June 1969the plaintiff has taken the Law School Admission Test and made application for admission to the University of Colorado School of Law more than once. Each request for admission has been denied. The only method for appealing an unfavorable decision of the admissions committee is to reapply for admission. Applicants denied admission have no recourse to a hearing before an impartial third party. Without recourse to a hearing in one of the courts inferior to the Supreme Court, the right to due process guaranteed by amendment five is abridged.

IP. 3I 9. The plaintiff further alleges that the law school admission process employed by the University of Colorado School of Law is similar to the procedure used by other law schools that belong to the

Association of American Law Schools. This process is constructed to screen applicants. Only desired classes of students are permitted to enter schools holding membership in the association. The American Bar Association uses the Association of American Law Schools, the Law School Admission Council, and the Law School Admission Services to restrict entry into the legal profession to certain classes of people. The plaintiff alleges that Viet Nam veterans with low grade point averages and low Law School Admission Test scores have been denied admission to law schools holding membership in the Association of American Law Schools in disproportion to their number in the general population of law school applicants each year since 1965.

10. Non-competitive professional associations are permitted by the Sherman and Clayton Anti-trust Acts. While these associations are permitted by the letter of the law, they violate the spirit of it.

In this case the right of professional associations to avoid competition violates the rights of both the plaintiff and those unsuccessful law school applicants unwilling to speak for themselves. ***

11. The plaintiff requests that the court award him one freshly minted dollar bill in the currency of the United States.

12. The plaintiff demands that the defendants be required to develop an adequate appeal procedure for situations similar to those described in paragraphs (6) through (10). This procedure will include, but not be limited to, (a) a written statement of reasons for summary dismissals, (b) a right to a hearing before an impartial third party, and, (c) the right of appeal to one or more of the courts inferior to the Supreme Court. ***

13. The plaintiff asks that the Association of American Law Schools be required to study admission patterns at its member schools IandI be required to publish

its findings *** if the charge made in paragraph (9) proves to be true.

14. The Court may grant other relief it deems appropriate. ***

870227 Judgment and Order: United States District Court - District of Colorado Ip. 1I

Plaintiff's pro se Complaint alleges numerous causes of action against the above-named defendants. First, he claims a Professor at the University of Colorado asked him to withdraw from the Air Force Reserve Officer Training Program in November, 1966. He withdrew, without being given an opportunity for a hearing. Plaintiff also asserts he was asked to withdraw from the Student Teaching Program at the School of Education at the University of Colorado during the spring of 1969. Again, he withdrew, without opportunity for a hearing. Lastly, he claims he has been denied admission to the University of Colorado School of Law more than one time. He contends his denial of admission occured without due process. Additionally, he claims

Viet Nam veterans with low grade point averages and low Law School Admission Test scores have been denied admission to law schools more readily than other applicants since 1965. He also contends defendant professional associations are operating in violation of the Sherman Act and the Clayton Act. Ip. 2I

Only the United States Air Force Reserve Officer Training Program, the Law School Admission Council (LSAC), and the Law School Admission Services (LSAS) have appeared to date. Each has filed a Motion to Dismiss the Complaint on numerous grounds. We find the plaintiff's claims are barred by the applicable statutes of limitation.

Plaintiff's claim against the United States Air Force Reserve Officer Training Program[1] is barred by the statute of

[1] The Reserve Officer Training Program is not the proper party defendant. Plaintiff should have brought his claim against a branch of the military or a federal agency. However, we assume for purposes of this Order that a proper U.S. defendant has been named.

limitations. Under 28 U.S.C. #2401(a), a cause of action against the United States or one of its agencies is time-barred if not commenced "within six years after the right of action first accrues." Plaintiff's claim against the United States, contained in Paragraph 6 of the Complaint, admittedly accrued in 1966. He did not file his Complaint until September 2, 1986. He has made no showing that the statute of limitations was somehow tolled during the twenty years between his departure from the Training Program and commencement of the suit. Nor does the Court know of any cognizable reason for tolling the statute. Defendant United States Air Force Reserve Officer Training Program's Motion to Dismiss is Granted.[2]

Plaintiff's claims against the LSAC and the LSAS are similarly barred. Ip. 3I

[2] Plaintiff appears to argue that the due process violation at issue has somehow been continuting to this date. However, plaintiff has not brought a class action, and cannot purport to assert the rights of others not before the Court.

His due process and equal protection claims are apparently brought pursuant to 42 U.S.C. #1983. As there is no federal statute of limitations for claims brought under 42 U.S.C. #1983, the Colorado statute of limitations for actions under federal statutes applies. Under Colo.Rev.Stat. #13-80-102 (g)(1986Cum.Supp.), such claims are barred if they are not commenced within two years after the cause of action accrues. Again, we can conceive of no reason why the statute of limitations on plaintiff's constitutional claims was tolled during the period at issue.[3] As such, defendants LSAS and LSAC's Motion to Dismiss those claims is Granted.

Plaintiff also asserts antitrust claims against LSAS and LSAC. Section 4B of the Clayton Act, at 15 U.S.C. #15b, provides a

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[3] Again, plaintiff appears to assert some sort of continuing constitutional violation. However, we confine our analysis to the violations asserted on behalf of the plaintiff himself, between the years 1965 and 1969. See footnote 2, above.

four year statute of limitations for private antitrust actions. The limitations period begins to run when the cause of action accrues.[4] The Ninth Circuit has held #4B does not apply to equitable claims under the Clayton Act, but a defense of laches does apply and bars equitable claims four years after accrual of the cause of action. International Telephone & Telegraph Co. v. General Tel. & Electronics Corp., 518 F.2d 913, 929 (9th Cir. 1975). We concur. Because again, no sufficient reason exists for tolling the statute, the Motion to Dismiss plaintiff's antitrust claim is Granted.

Accordingly, defendants' Motions to Dismiss are Granted. Accordingly, the remainder of plaintiff's claims fail under the respective statutes of limitation, for the reasons expressed above. Therefore, those claims are dismissed, sua sponte.

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[4] A cause of action under the Sherman Act does not accrue until damages are ascertainable. However, in this case, any damages to plaintiff were ascertainable upon his denial of admission to law school.

The Clerk of the Court is Directed to enter judgment for defendants and against plaintiff Robert John Arko. Plaintiff's claims are Dismissed, with prejudice. The Clerk of the Court is Directed to enter judgment in favor of the defendants and against the plaintiff. Each party to bear its own costs.

***

870511 Order: United States District Court - District of Colorado Ip. 11

This matter comes before the Court on Plaintiff's Motion Requesting a New Trial or Grant of Leave to Appeal filed April 7, 1987. Plaintiff has since filed a motion requesting leave to redesignate his request as a Motion Requesting Relief from Final Judgment and Permission to Submit New Evidence. Plaintiff's Request for Permission to File a Motion is Granted. The Clerk of the Court is Directed to file plaintiff's tendered Motion Requesting Relief.

Defendant's have responded to plaintiff's initially tendered motion. The responses apply

as well to the newly filed motion. The issues are therefore fully briefed and ripe for resolution. Plaintiff's Motion Requesting Relief is hereby Denied.

It appears plaintiff's motion is now asserted only under the provisions of Rule 60(b), Fed.R.Civ.P. However, inasmuch as the motion may still Ip. 2I be construed as a Motion for New Trial, the motion is denied as untimely and procedurally inappropriate. This action was concluded prior to trial by entry of judgment on motion to dismiss. Even if a motion for new trial were appropriate, plaintiff's motion was filed more than 10 days after entry of judgment, and was therefore untimely. Fed.R.Civ.P. 59(b).

Inasmuch as plaintiff's motion may be construed as a motion to alter or amend judgment, it was also untimely filed. Pursuant to Fed.R.Civ.P. 59(e), a motion to alter or amend must be filed within 10 days after entry of the judgment. Additionally, we find the motion lacks substantive merit.

In our ruling of February 27, 1987, we found the statute of limitations had run on plaintiff's various claims. The evidence tendered with plaintiff's motion does not affect that judgment. None of the evidence submitted warrants a finding that the applicable statutes of limitations were somehow tolled. Plaintiff's claims are still time barred.

Plaintiff's newly tendered motion was filed pursuant to Rule 60(b), Fed.R.Civ.P. This motion was timely filed, but lacks merit. As stated above, our judgment of February 27, 1987 is not affected by the evidence submitted to the Court. As such, plaintiff's motion is denied.

Plaintiff has also filed a Motion for Grant of Leave to Appeal. In that motion, plaintiff appears to request a stay of judgment. Plaintiff has not shown sufficient reason for stay of judgment pending appeal. The Motion is denied. Plaintiff is hereby granted until May 18, 1987 to file a

properly framed Notice of Appeal. No further extensions will be granted.

Accordingly, it is Ordered that Plaintiff's Motions filed pursuant to Rules 59(a), 59(e) and 60(b), Fed.R.Civ.P. are Denied. Further, plaintiff's Motion for Stay of Judgment pending Appeal is Denied at this time. ***

870521 Minute Order Entered by Chief Judge Sherman G. Finesilver Ip. 1I

Plaintiff's Request to File a Motion and Motion Requesting Permission to Submit Additional New Evidence filed May 18, 1987 are Granted. The Court has reviewed the tendered evidence. The newly submitted evidence does not alter the views expressed in our Orders of February 26, 1987 and May 11, 1987. Plaintiff has submitted a timely Notice of Appeal. ***

JOINT APPENDIX PREPARED BY THE APPELLANT

861103 Motion of Law School Admission Council and Law School Admission Services, Inc. to Dismiss the Complaint

IP. 5I II. Plaintiff Has Not Established Personal Jurisdiction Over Defendants LSAC and LSAS.

The complaint fails to show that this Court has personal jurisdiction over LSAC or LSAS. Plaintiff does not rely upon any federal statute authorizing extraterritorial service of process upon nonresidents of Colorado. Under Federal Rule of Civil Procedure 4(e) and (f), state long-arm statutes may be used to assert personal jurisdiction over nonresident defendants.

The Colorado long-arm statute, C.R.S. # 13-1-124(1)(a) and (b), would not subject defendants to personal jurisdiction unless they had transacted business or committed a tort within Colorado. Plaintiff does not allege any injury from the administration of the LSAT in Colorado, and this is the only contact that could conceivably be attributed to LSAS or LSAC for these purposes. Under

the prevailing constitutional "minimum contacts" test for assertion of long-arm jurisdiction, the fact of plaintiff's taking the LSAT cannot be used to establish personal jurisdiction over nonresident defendants for the purposes of determining liability for other, unrelated acts comprehended by plaintiff's conspiracy Ip. 6I theory. *** It would offend "traditional notions of fair play and substantial justice" to force LSAC and LSAS to defend against this action in Colorado simply because plaintiff was rejected by a Colorado law school. *** Thus, there is no personal jurisdiction over LSAC and LSAS as a matter of law.

III. Plaintiff's Civil Rights Claim Is Without Merit.

The complaint purports to state a claim against all defendants under the Fifth Amendment to the United States Constitution. The Fifth Amendment restricts federal government activities and does not apply to LSAC and LSAS. If taken as asserting a Fourteenth

Amendment claim against LSAC and LSAS, this claim still must fail as a matter of law. The Fourteenth Amendment due process clause only applies to actions that can fairly be attributed to the states; a suit cannot be maintained under 42 U.S.C. # 1983 against wholly private entities, such as LSAC and LSAS. *** Nor can plaintiff avail himself of 42 U.S.C. # 1985, which has consistently been held to protect only victims of invidious race- or class-based discrimination. *** Ip. 7I Vietnam veterans with low grades and LSAT scores are not such a protected class. *** No action by LSAC and LSAS could have infringed plaintiff's rights to substantive or procedural due process under either the Fifth or Fourteenth Amendments.

Count nine of plaintiff's complaint may be interpreted as a claim for denial of the equal protection of the laws. Plaintiff alleges that Vietnam veterans with low grades and low LSAT scores have been discriminated against in the area of law school

admissions. Since plaintiff is suing in his individual capacity, he must establish that he has suffered injury himself as a member of a protected class, and he is not entitled to assert the constitutional rights of third parties, whether Vietnam veterans or others, in this action. *** The complaint fails to show any such injury at the hands of LSAC and LSAS. And, as noted above, the actions of LSAC and LSAS are not the actions of the federal government or any state government to which equal protection guarantees apply. Plaintiff's civil rights claim should therefore be dismissed as against LSAC and LSAS as a matter of law. Ip. 8I

IV. Plaintiff's Antitrust Claim Is Without Merit.

The complaint does not allege a single fact to support the allegation of a conspiracy in violation of the Sherman and Clayton Acts. Plaintiff's "business or property" were not injured as required by Clayton Act # 4, 15 U.S.C. # 15. Plaintiff was not

necessarily entitled to be admitted to law school, and thus no cognizable property interest was harmed by his rejection. *** The complaint does not allege that plaintiff is threatened by LSAC and LSAS with future harm to any interest which may be protected by a private suit for equitable relief under Clayton Act # 16, 15 U.S.C. # 26. *** The complaint thus fails to allege that LSAC and LSAS have harmed any interest that plaintiff has which is protected by the federal antitrust laws.

Past injuries cannot be redressed under the federal antitrust laws unless they were proximately caused by the defendant's conduct. *** On a fair reading of the complaint, it is evident that whatever injuries plaintiff alleges were not directly or Ip. 91 even remotely caused by LSAC and LSAS. Plaintiff's antitrust claim against LSAC and LSAS should therefore be dismissed as a matter of law.

861105 Motion to Dismiss

*** IP. 2I 4. The complaint fails to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), Fed. R. Civ. P. Assuming all of the allegations made against the named federal defendant are true, for purposes of this motion only, the allegations still fail to state a claim against the federal defendant upon which relief can be granted. Assuming that plaintiff was in the ROTC program at the University of Colorado in November, 1966, and "was asked to withdraw" from the ROTC program, and "did so without comment;" those allegations fail to state a cause of action or claim for damages upon which relief can be granted.

861118 Memorandum Opposing Motions by Three Defendants to Dismiss the Complaints Against Them

IP. 3I *** Federal Law 42 U.S.C. # 1983 authorizes law suits in federal court when a state agent has deprived the plaintiff of his constitutional rights. The First

Amendment gives the people the right to petition the government for a redress of grievances. Consequently, this court has jurisdiction in this case.

The plaintiff could have claimed that his First Amendment right to Freedom of Speech was also violated by this defendant. In Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731, (1969), the Supreme Court ruled that wearing an item of clothing is an expression of speech guaranteed by the First Amendment. It follows that denying an individual the same right is also a violation of that amendment. ***

IP. 7I Referring to the Biole again, it is relevant to cite the case of Paul of Tarsus, "Acts of the Apostles", chapter 22, verses 22-29. After claiming Roman citizenship by birth, Paul was granted a Ip. 8I statement of charges, a hearing at the district court and appeal to Rome. The charge against him was *** bad teaching. ***

IP. 8I *** At no point in the complaint did the plaintiff invoke the Fourteenth Amendment. While the plaintiff does not reject any of the benefits to be derived from the guarantees this amendment makes, he chooses to base his arguments on firmer ground.

In its long history the Fourteenth Amendment has become the I-25 of Constitutional Law. A supreme court composed of contemporaries of the Radical Republicans made it clear in the Slaughterhouse Cases, 16 Wall. 36 (1873), that this amendment was originally intended for the protection of certain groups of people, primarily those who were considered slaves prior to 1863. During the next eighty years many groups used the shelter this amendment provides. During the 1950's the movement for minority rights used the protection afforded by the Fourteenth Amendment in Brown v. Board of Education, 347 U.S. 483, 73 S.Ct. 686, 98 L.Ed. 873, (1954), and other school desegregation

cases that followed. The plaintiff is in full agreement with the general past use of this amendment. Ip. 9I Should he apply this amendment in this case and fail, his action would tend to weaken the sound provisions of this amendment.

The fact that the plaintiff has not invoked the right to equal protection of the laws does not imply a denial of this right. The plaintiff chooses to emphasize other rights. The selective service process in operation during the 1960's did not provide for equal protection of the laws. Colleges, universities, and the defendants made few, if any, alterations in their programs to account for a selective service system that obligated only men to service. During this period men were required to take at least twelve semester hours of course work each semester and take a test each May to retain their draft deferments. Women were exempt from these rules and regulations. They were free to take as few hours of

course work as they chose and they were able to withdraw from school for a semester or two if they wished. ***

There is no firm rule regarding application of due process in educational institutions at the university level. One of the plaintiff's objectives is to move the court to develop such a rule. The Court of Appeals for the Fifth Circuit ruled in Dixon v. Alabama State Board of Education, 294 F.2d 150 (1961), that college students have the right to procedural due process in disciplinary situations. The court record does not indicate what these students were accused of. In a similar case involving junior and senior high school students suspended for ten days for misconduct, without notice or Ip. 10I hearing, the supreme court drew the same conclusion in Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725, (1975). The court's divided opinion was written by Mr. Justice White who was also responsible for the opinion in Duncan v. Louisiana, 391 U.S.

145, 88 S.Ct. 1444, 20 L.Ed.2d 1412, rehearing denied 392 U.S. 947, 88 S.Ct. 2270, 20 L.Ed.2d 1412, (1968). The balance of the court shifted in Board of Curators of the University of Missouri v. Horowitz, 98 S.Ct. 948 (1978). an opinion written by Mr. Justice Renquist. His opinion clearly distinguishes between due process procedures to be used in disciplinary situations and those to be used in academic situations. In general, procedures required for poor academic performance are less stringent than those required for bad conduct dismissals and suspensions.

The opinion in Horowitz is clear cut. Taken alone, this opinion gives college and university professors a blank check in the area of suspensions and dismissals for poor academic performance or unsatisfactory job performance in training situations. Horowitz fails to take into consideration the possibility that a professor or administrator will choose to dismiss a student

on academic grounds when the real basis for the dismissal is false accusation of misconduct. In addition to this inequity, the dictum in Horowitz is directly opposed to the doctrine of preparation for "additional obligations" enunciated in Meyer, Pierce, and Yoder, supra. What happened to Miss Horowitz after she was forced out of medical school? Ip. 11I

In this case the results of the defendants' actions are clear. In the case of the Air Force ROTC Program, if we assume that the professor's actions in November 1966 met the minimum requirements for due process in Horowitz - verbal notice and oral hearing - did the professor's actions prepare the student to take on "additional obligations"? The plaintiff is prepared to prove that his actions did just the reverse, not because he did not perform his duties as he should have; but, because the rules under which he was operating did not provide for adequate procedural due process.

In the case of defendants LSAC and LSAS the same is true. Assuming that the defendants provide adequate notice and hearing procedures mandated in Horowitz, does this process provide the plaintiff with the opportunity to take on"additional obligations"? The plaintiff's answer is no. *** This process does not meet the standards in Meyer, Pierce, and Yoder. *** Ip. 12I

III. Conclusion: The Problem of Relief

Rule 12 (b) (6) allows dismissal of a complaint for "failure to state a claim upon which relief can be granted". The plaintiff believes that the defendants should be able to raise one dollar. *** The plaintiff further believes that the defendants can be expected to provide adequate due process procedures for the people with whom they work in academic situations. If policemen can provide due process in criminal situations, professors should be able to provide the same due process in academic situations. It should be easy for the Association of

American Law Schools and the American Bar Association to provide the same information on Viet Nam veterans that it provides on women and other minority groups, even though they do not merit special protection under the Fourteenth Amendment. Ip. 12I

*** ITIhe court may grant the additional relief necessary to comply with Federal Rule 12 (b) (6).

861209 Memorandum Supporting a Motion Requesting Certification of Jurisdiction

*** IP. 5I The most tangible injury suffered by the plaintiff was the fact that he was inadequately prepared for basic military training during the summer of 1969. A university academic program does not adequately prepare the physical body for basic military training. The English language is deficient in words that accurately describe the internal emotional trauma associated with substandard performance in basic training. *** It took the plaintiff more than a decade to realize that the real

problem was not an internal deficiency, but a simple lack of proper physical conditioning he joined the Air Force Program to get.[A] *** Ip. 61

5. The Eagle's Wing: Individual Freedom in National Unity

Mr. James Madison was five feet, six inches tall and had a penchant for black attire. While we have most of his personal papers, his fine library was dispersed by his widow. His home was engulfed in new additions by a movie star and a horse breeder. His memory has been eclipsed in the popular mind by his more flamboyant contemporaries. Thomas Jefferson and Benjamin Franklin head the list. The Wall Street Journal; November 28, 1986, page 1, column 4. He is called to mind because it is his spirit, along with that of Lady Justice, that motivates the plaintiff.

[A] After writing this paragraph the appellant had an opportunity to view Full Metal Jacket, a dramatic presentation by Stanley Kubrick. Question 13 is the direct result. M-I-C-K-E-Y M-O-U-S-E ?-?-?

(Note: Lettered footnotes do not appear in the original record.)

The primary objective of this project is to bring the elementary rules of due process to college and university campuses in the United States. Raising the issue of sovereign immunity in the context of this case goes far beyond the plaintiff's original intent. There is little doubt that current case law supports the defense's position. It is within reason that the legal profession and the university community have developed layers of legal insulation over the past two-hundred years.

In the mind of the Constitution's primary author, however, Ip. 7I the pro se litigant opposed to a state or its agents is in a unique relationship with the national government as it relates to the operation of the government. The individual may seek refuge in the protection of the federal courts when a state or its agents have abandoned him. When the individual's rights have been restricted by the state, the individual may seek the protection of the federal courts.

In a national government there is a direct relationship between the individual and the national government in its daily operations. In a federal government the state government and its agents are a reflection of the collective will of the sovereign people. The state in a federal government may deal directly with the individual, with little or no interference by the federal government. Mr. Madison states clearly, in The Federalist, Number 39, that in the trial of controversies to which states may be parties the operation of the government on the individual makes the government national in character. The emphasis in the following passage is Mr. Madison's. He makes the case far better than the plaintiff ever could.

> The difference between a federal and a national government, as it relates to the operation of the government, is supposed to consist in this, that in the former the powers operate on the political bodies composing the Confederacy, in their political capacities; in the latter, on the individual citizens composing the nation, in their individual capacities. On trying the Constitution by this criterion, it falls under the

> national, not the federal character; though perhaps not so completely as has been understood. In several cases, particularly in the trial of controversies to which States may be parties, they must be viewed and proceeded against in their collective and political capacities only. So far the national countenance of the government on this side seems to be Ip. 8I disfigured by a few federal features. But this blemish is perhaps unavoidable in any plan; and the operation of the government on the people, in their individual capacities, in its ordinary and most essential proceedings, may, on the whole, designate it, in this relation, a national government.

In brief, sovereign immunity should not apply when an individual and a state agent are in controversy. If the professor in this case was not a representative of the Air Force as the defense claims, he must have been a state agent!

It is easy for modern Americans to take the Constitution out of context. The Federalist was written for a Constitution stripped of additions. There were no amendments to hamper the sleek, unified theme. The authors clearly intended that the rights of the individual be guaranteed not by the written word, but by the unspoken contract

forged during the Revolution, Mr. Alexander Hamilton, in his summary of Mr. Madison's thinking on this subject in The Federalist, Number 84, says that a Bill of Rights is unnecessary in a government founded on the power of the people. Since the people surrender nothing and retain everything, they have no need of particular reservations. This is a living contract born in the Magna Charta and renewed periodically over the past eight hundred years. In essence, this contract transends the bonds of time and the written rules of lesser political entities.

One of the lesser issues in this case is whether intelligence or common sense should dominate in the area of practical education. Had our forefathers sided with intelligence, they would have Ip. 9I chosen a dolphin or a chimpanzee Ias a symbol for this new nationI. They chose a bald eagle, a bird of prey known for its excellent sight. With this symbol they cast their eye

over many generations of Americans, including our own, to guard the rights of the individual from any encroachment by the state. The eagle's wing offers shelter to all who request it. ***

861217 Reply Memorandum of Defendants Law School Admission Council and Law School Admission Services, Inc. to Plaintiff's Memorandum in Opposition to Motion to Dismiss

*** IP. 2I Argument

I. Statutes of Limitations and Laches Bar Plaintiff's Claims.

Plaintiff seeks to excuse his long delay in bringing this action by arguing that he "exhausted all other reasonable alternatives prior to bringing his complaint to this court." Plaintiff's Memorandum at 4. Plaintiff's civil rights claim, if considered as a claim under 42 U.S.C. section 1983, is not subject to any requirement that state judicial or administrative remedies be exhausted before suit can be filed. *** Plaintiff's motives for voluntarily waiting beyond the limitations period are irrelevant.

Plaintiff next argues that because his college transcript affects his present and future opportunities, he should be permitted to bring suit despite the applicable statutes of limitation and the doctrine of laches. Plaintiff's Memorandum at 4. Ip. 3I According to the rationale advanced by the plaintiff, an action could never be brought too late if a college transcript were involved. Furthermore, since LSAC and LSAS are plainly not responsible for the contents of plaintiff's college transcript, this argument is no impediment to dismissal of the complaint against LSAC and LSAS.

Plaintiff cites four United States Supreme Court cases to show that his claims should not be time-barred. Plaintiff's Memorandum at 4-5. These authorities are all inapposite. Plaintiff's citation of Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), is inapposite because the civil rights of minors are not at issue here; plaintiff does not argue that

the statutes of limitation were tolled by reason of plaintiff's infancy. Plaintiff also cites Meyer v. Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters, 268 U.S. 510 (1925); and Wisconsin v. Yoder, 406 U.S. 205 (1982), each of which involved a constitutional challenge to a state statute regulating education. None of these three cases has anything to do with limitation of actions. Plaintiff cites all these cases in support of his claim that "a school . . must prepare a student to take on additional obligations when he graduates." Plaintiff's Memorandum at 5. Later, plaintiff argues that defendants LSAC and LSAS, among others, breached this claimed duty. Id. at 7, 10-11. The remarks in Pierce v. Society of Sisters to which plaintiff refers, ip. 4I however, do not deal with the duty of schools to provide adequate preperation. Rather, they stand for the proposition that parents have the right to direct the upbringing of their minor children. See Wisconsin v. Yoder,

supra, 406 U.S. at 232-33 (quoting Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925)). The other cases cited by plaintiff also do not support his argument. ***

III. Plaintiff's Civil Rights Claim Is Without Merit.

Defendants LSAC and LSAS had anticipated that the Court might be willing, under the circumstances, to read plaintiff's complaint as including a demand for relief based on Fourteenth Amendment violations, even though plaintiff's allegations are confined to Fifth Amendment violations. Accordingly, defendants argued that the Fourteenth Amendment is Ip. 5I inapplicable to LSAC and LSAS. Plaintiff, believing that LSAC and LSAS have put words in his mouth, states that he does not invoke either the Fourteenth Amendment or, more specifically, the Equal Protection Clause. Plaintiff's Memorandum at 8-9. Plaintiff then cites Board of Curators of the University of Missouri v. Horowitz 435 U.S. 78 (1978), a case in which the plaintiff

brought suit for denial of due process of law under 42 U.S.C. # 1983, a federal statute enacted pursuant to the authority of the Fourteenth Amendment. Whatever route plaintiff wishes to take, the result is the same: defendants LSAC and LSAS are not governmental entities or state actors and thus cannot be charged with depriving plaintiff of his constitutional rights. Plaintiff's memorandum is unresponsive on this point.

870105 Reply Memorandum by Plaintiff in Response to Reply Memorandum by Defendants LSAC and LSAS Dated 12-10-86

IP. 8I ILetter in evidence from the University of Colorado School of Law; dated April 15, 1983. The text has been omitted.I

870409 Motion Requesting a New Trial or Grant of Leave to Appeal to the Court of Appeals

*** Prayer for Relief IPp. 2-3I

9. The plaintiff requests that the Department of the Air Force stipulate the degree to which it relied on family references in the admissions process for the United States Air Force Reserve Officer

Training Program. He also would like to know the relative weights placed on other factors contributing to the admission decision.

10. The plaintiff also asks that the School of Education in the University of Colorado be required to state the degree of reliance it placed on both formal, written references and informal, word-of-mouth references in its various decisions relative to the plaintiff's participation in the Student Teaching Program at the University both during the Spring of 1969 and during the 1980-81 school year.

11. The plaintiff further requests that the individual members of the Admissions Committee of the University of Colorado School of Law during the 1982-83 admission seasons be required to present themselves for questioning before the court regarding the degree to which each member relied on the formal written record and informal word-of-mouth references while considering the

plaintiff for admission. ***

12. In light of the new evidence presented with this motion, the plaintiff requests that the court order a specific list of steps to be taken to legally resolve any dispute that may still linger regarding the disposition of the estate of Mr. and Mrs. Joseph Sawaya. At minimum, this legal resolution must include a personal visit by a representative of the court to Mr. Jess Sawaya's residence to explain to him each step in the probate of his father's will, why there was no court recognition when his mother died, the specific steps taken by his sister as executrix of her father's estate, and any other questions Mr. Sawaya may still have. This conversation should be recorded and made a part of the court record. The court's personal representative should be an expert on Colorado law regarding wills, estates and trusts. ***

IP. 5II Letter from Robert John Arko to Mr. and Mrs. Jess Sawaya, dated March 23, 1987 I

This letter is to reiterate in writing the substance of our phone conversation after 8 a.m. on Saturday morning, March 21, 1987.

As I understand it you hold my mother, Josephine Arko, personally responsible for improper administration of your father's estate, probated in the State of Colorado shortly after his death in January 1945. Should my mother die or otherwise be incapacitated, you will then hold me personally liable for the improper administration of the estate of Joe Sawaya until a list of unspecified questions assembled by you are answered to your personal satisfaction.

Your questions relate to a group of approximately 50 documents you sent to my mother shortly after the death of Hazel Sawaya, your mother, on April 19, 1980. The questions accompanied the documents in a

packet sent by certified mail you claimed on the phone.

You also indicated that your difference of opinion with my mother has an unspecified impact on my daily life. At the same time you indicated that there is little or nothing I can do or say at present that would resolve this difference of opinion between yourself and my mother. Once I take her place due to her death or incapacity, however, we will be able to meet in an open area, secured for all parties personal protection, so that I can respond to the same questions you have for my mother.

Through this conversation you indicated that over the years other versions of your allegations expressed in this letter have surfaced in Trinidad, Albuquerque, Denver, and Phoenix, among other places. The allegation of forgery in the administration of your father's estate, for example, is some distance from the truth and was not made by you.

I will be looking forward to a written response to this letter from you to verify its accuracy on or before April 13, 1987. No response from you will indicate your substantial agreement with all statements made. I am taking the liberty of sending a copy of this letter to your brothers Fred and George and your sisters Josephine and Jane.

IP. 6IILetter from Mr. and Mrs. Jess Sawaya to Robert John Arko, dated March 28, 1987.I

It was nice hearing from you. We here in Albuquerque are all fine.

Bob, I too, share with your concern. I've heard of stories like this, but I never thought that they would ever enter our family.

Bob, why don't you reverse your strategy, and put the cart behind the horse, because unless and until your mother admits her actions to you and me, her and I will leave this world, taking its contents with us.

As far as what the people will and are saying, it is their own perogative, because I made the remark to Snider and Fozie Skeff long ago, that "I was disappointed with the way your mother probated the will", and that's all I said.

Since then, the people have come up with their own conclusions, and I think as time continues to go forward, this matter will no doubt get worse.

To this date, I fail to understand why your mother continues to ignore this matter, and above all, why she hasn't discussed it with you and perhaps Nancy, because if she is afraid that I will take action against her, tell her that I've been compensated many many fold by the good lord for this heartbreak, and that I don't need it.

All I ever want from the Sawaya Estate now is a true and honest explanation of how and why they chose this way and method of settling the estate.

Whether I should blame myself for not persuing this matter long ago, can be contributed to your Aunt Mary and to your cousin Joseph, because I'm to chicken to embarrass the family as it now is.

Bob, I'm sure that if you go about this in a different manner, that your questions will be answered, because faith has its way of guiding ones life.

I hope that I have answered some or all of your questions, and I will close with

L o v e *** Uncle Jess and Aunt Mary ***

870417 Defendant's Response to Plaintiff's Motion Requesting a New Trial or Grant of Leave to Appeal to the Court of Appeals

*** IP. 3; Footnote 1I Pursuant to Fed. R. Civ. P. 60(b)(2), newly discovered evidence can be a basis for relief from judgment only if by due diligence it could not have been discovered in time to move for a new trial under Rule 59(b). Plaintiff's "newly discovered evidence" is a March 28, 1987, response to a letter he sent on March 23, 1987. Due diligence by plaintiff could

have resulted in the timely discovery of his "newly discovered evidence".

Even assuming the evidence was newly discovered, it is clearly irrelevant to plaintiff's claims pursuant to Fed. R. Evid. 402.

870424 Motion Requesting Relief from Final Judgment and Permission to Submit New Evidence

IP. 4II Letter from Mrs. Josephine Arko to Mr. Jess Sawaya, undated:I

I've read the recent flow of letters pertaining to the accusations against me and I do feel that we have reached the point of a show-down.

I don't believe I did anything against you or anyone else for that matter, but the only way to air the problem is to bring it out in the open for all to view.

I want you to set up a meeting for us together with Fred, George and Jane because this situation, in my opinion, involves all of us and not just Me.

Let me know when and where the meeting

is to be held and I'll arrange to be there.

***

IF. 511Letter from Mr. Jess Sawaya to Mrs. Josephine Arko, dated April 18, 1987:I

I received your letter and was very happy to see that you have decided to help solve our matter with Dad's Will.

First of all, Fred Sawaya knows nothing about this matter, and at this time, we will have nothing to do with Fred Sawaya. As for Jane or George, I doubt very much if they are capable of assisting you.

There's only one person that knows the real truth, and that's Jess Sawaya.

I will accept your challenge on the following conditions only.

1. That you answer all questions submitted to you in writing, and I in turn do the same for you.

2. That each party has the right to submit all the questions they desire to submit, for three (3) times, at three (3) different occasions, and all questions

submitted must be answered within twenty (20) days after receipt of same.

3. That each party will have the right to secure any person or persons, to assist in the answering of the questions, and that all answers to all questions answered be considered final.

4. That all answers sent through the mail, be sent via Certified Mail, to insure received by both parties.

5. That in the event that more time is required to help solve this matter, that it be mutually agreed to between both parties.

If this plan meets with your approval, we can and will start once I hear from you.

***

IP. 6IILetter from Mrs. Josephine Arko to Mr. Jess Sawaya, dated April 23, 1987:I

O K Jess, send me a list of your accusations and grievances and let me see what I can do about answering them at this

late date.

Why you didn't face me with them forty (40) years ago, I'll never know. ***

870512 Motion Requesting Permission to Submit Additional New Evidence

IP. 2IILetter from Mr. Jess Sawaya to Mrs. Joesphine Arko, dated April 27, 1987:I

Referring to your letter of the 23rd last, I'm going to be honest and say that I don't and can't believe what you wrote.

For a start, let's start with the questions in my letter to you on May 10, 1980 which I am inclosing a copy of it.

I will appreciate your sending me the answers in the following manner.

Question No. 1

Why Wasn't I Included in the Probation of the Will.

Answer:

????????

You indicated that you were doubtful that you could answer these questions at

such a late date. I don't think you will, because I can remember all of the happenings as though they were happening right now.

I shall look forward to receiving your answers as agreed to.

Thank you. ***

IPp. 3 and 4I ILetter from Mr. Jess Sawaya to Mrs. Josephine Arko, dated May 10, 1980. It accompanied the preceeding letter dated April 27, 1987;I

It was good talking to you last night. I was concerned as to why I hadn't heard from you sooner. I was also very disappointed as to the progress made. This matter just can't be discussed over the phone.

Josephine, I had better be versed on the contents of the will, and I feel that only you can do it.

I think that I should have your version of the following, because I feel that the following questions will be asked, and as it is right now, I couldn't begin to have

answers for them.

1. Why wasn't I included in the probation of the will.

2. Why wasn't I ever briefed on the progress of the Joe Sawaya & Son, and the Joe Sawaya & Sons firms.

3. What consideration did I receive, for my participation in the Joe Sawaya & Son and the Joe Sawaya & Sons firms.

4. What portion, if any, did I own of the Joe Sawaya & Son, and the Joe Sawaya & Sons firms.

5. What wage or payment did I receive, if any, for my contribution in these firms, from the beginning of their existance, until the time that I left, in November 1945.

6. What contribution or consideration was made by Fred J. Sawaya, to Joe Sawaya & Son, when the title was changed to Joe Sawaya & Sons.

7. According to the Will, it shows that all of Joe Sawaya's children, namely, Josephine, Jess, Fred, Jane and George,

were equal partners, in the Joe Sawaya & Son and the Joe Sawaya & Sons Firms. If so, what contribution and consideration was made by Jane, George and Hazel, the deceased wife, and Fred, when it was known that the Joe Sawaya & Son and the Joe Sawaya and Sons firms, were managed and operated by Joe Sawaya (Deceased), Jess J. and Josephine.

8. If, according to the Will, it shows that Jess J. Sawaya's portion of the estate was $1,198.95 then what contribution or consideration was given Jess J. and Josephine for their work and interest in the Joe Sawaya & Son and the Joe Sawaya and Sons firms, from the time that they began operating, until the death of Joe Sawaya (deceased.) in January 1945, and until the departure of Jess J. Sawaya from the firm of Joe Sawaya & Sons, in November 1945.

9. According to the Will, it shows that Jess J. Sawaya had only $1,198.95 up to the death of Joe Sawaya, in January 1945, and up to and including the time that the

will was probated in October, 1945, and still one month later, in November 1945, just one (1) month later, when Jess J. Sawaya left the firm of Joe Sawaya & Sons, he was paid $30,000.00 for his share in the business. How, Why and Where was this figure arrived at.

10. According to the will, it shows that Jess J. Sawaya attended the hearing of the probate of the Joe Sawaya estate. Jess J. Sawaya had no knowledge of the hearing, and if so, why wasn't the $1,198.95 due him, paid to him.

11. How is it possible, when no notice was given Jess J. Sawaya of the hearing, that he could have been present.

12. Who signed the name Jess Sawaya to the acknowledgement of the hearing, when Jess J. Sawaya wasn't present, and if he was, why didn't the court acknowledge the "legal" title of Jess J. Sawaya and instead of just Jess Sawaya, as it shows.

13. Who signed or acknowledged receipt

of this money ($1,198.95). Whose possession is this money in now.

14. Who forged the name "Jess Sawaya" as the person who received the $1,198.95 when it should have been Jess J. Sawaya, the "legal" title.

15. Who, where and how, was the Inventory of the Assets of the Joe Sawaya & Son, & the Joe Sawaya & Sons Firms arrived at as shown on the Will.

16. If the inventory is a certified accounting of the Assets of Joe Sawaya & Son and the Joe Sawaya & Sons firms, then why wasn't such assets as (Semi-Trailers, Swift Building, Frost Street Building, Animas Street Home,[B] and the West Main Street properties included in the inventory, including Accounts Receivable, etc.

Josephine, I could go on and on, and inasmuch as you and you alone is the only person who can answer these questions, I

[B] This is 415 Animas Street; Trinidad, Colorado; not 404 Animas Street, the current residence of the appellant.

firmly believe that everyone, that everyone, including Fred J. Sawaya, shouldn't interfere, because if Fred is so well briefed in this matter, then why wasn't I.

Josephine, I don't intend fighting with any of you, and above all, I don't intend employing an attorney as Fred suggested, because if I tell the story as it really is, then the whole burden is going to fall on you.

Again, I say that we should get together, and see what's on each of our minds, because if we don't, then one of us is going to eat each others words, and above all I don't intend fighting with anyone to arrive at this understanding.

Josephine, aren't you concerned that if the IRS multiplies the 5 partners by the amount given me, as the Will shows, that the estate of Joe Sawaya, is going to mushroom well over the $300 to $500 thousand figure.

Josephine, this is a serious problem,

so may I hear from you at your earliest convenience. ***

870527 United States Court of Appeals for the Tenth Circuit: Pro Se Docketing Statement

IP. 2I On September 2, 1986 the appellant filed his original complaint with the U.S. District Court for the District of Colorado requesting due process of law under Amendment Five of the Constitution of the United States. Due process was requested concerning three civil experiences the appellant had as a student at the University of Colorado and as an applicant in the law school admission process. A number of motions and briefs were filed by the plaintiff as well as by one or more of the defendants. Oral argument was not heard and no trial was held. Judgment was issued by the Honorable Sherman G. Finesilver, Chief Judge for the United States District Court for the District of Colorado on February 27, 1987. The court found that federal and state statutes of limitations and doctrines of

laches bar the plaintiff-appellant's claims against each of the responding defendants.

On or about February 10, 1987 it came to the attention of the plaintiff that he has been, is, and will continue to be associated with certain secret or, quasi-secret, agreements either directly or indirectly associated with the estate of Mr. and Mrs. Joseph Sawaya; the plaintiff-appellant's grandparents. Information related to this Ip. 3I legal problem continues to come to light at this writing. As it began to appear that the plaintiff's experiences as a student and law school applicant may be related to long-standing rancor over disposition of his grandparent's estate; the appellant sought relief from judgment or grant of leave to appeal. On May 11, 1987 the plaintiff's motion for relief from final judgment was denied; but his request for grant of leave to appeal to this court was granted.

The appellant requests that the court

of appeals relax the strict application of the applicable statutes of limitations and doctrines of laches to permit the relief requested in the court below to be granted in the court of appeals. The court of appeals should take into consideration a number of factors not given appropriate weight by the district court, First, the appellant lacks experience at bringing his claims to court. In this case the inexperience of the appellant is a major factor. His numerous applications for admission to a school of law were unanimously rejected. Consequently, he could not learn the rules regarding statutes of limitations and doctrines of laches using the normal path for this education. On other matters he has been denied legal counsel in writing by at least two attornies. The fact that the statutes referred to by the defendants are not generally available at or near the residence of the appellant should also be considered. Any one or two of these

factors taken alone are insufficient defense against the pleas made by the appellees in the district court. Taken together, however, they effectively violate the right of the appellant to counsel under Amendment Six ***.

The court of appeals should also review the evidence submitted since the district court's judgment dated February 27, 1987. One allegation in that evidence is the claim that the appellant may be indirectly associated with the crime of forgery. The accusation is repugnant. Should the judgment of the inferior court stand, *** ItIhe pleadings of the defendants and the judgments of the district court would amount to a bill of attainder. The Congress of the United States is strictly forbidden from passing such bills by Article One, Section Nine, Paragraph 3 of the Constitution ***. Article One, Section Ten, Paragraph One prohibits the states from doing the same.

Finally, there is no article or amendment in the Constitution that limits its

provisions to a specified period of time. While the congress and the various state legislatures have the right to make all laws required for the operation of our society, they can not use those laws to limit the rights of people that are expressly stated in the document. It is the belief of the appellant that the Constitution is a contract between the individual and the society as a whole that is signed at birth[C] and valid for the life of the citizen. Express rights, like due process, can not be limited by statute. IP. 4I ***

Does an individual have a First Amendment right to speak by wearing a particular military uniform? Does the ISecondI Amendment permit the individual to choose the type of arms he will bare? Does the Fifth Amendment insure the right to due process of law in civil matters? Apart from the length of one's hair, is there any right

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[C] After giving this issue much thought, the word "birth" should be changed to "conception".

retained by the people under the Ninth Amendment? In spite of the Fourteenth Amendment, can due process of law be avoided in state institutions because it would be unpleasant or inconvenient to do otherwise? ***

870726 Brief of the Appellant

IP. 9I *** Then, on Sunday afternoon, December 20, 1981, according to the appellant's notes, that impression began to change. The event is only meaningful now. It went unnoticed at the time. Because there was nothing better to do the appellant picked up a book that had been around for many years. The case of Paul Crump was dramatic. It was read in one sitting. The remainder of this book was interesting, but not on a par with the first chapter. The Jury Returns by Louis Nizer is still a bur under the appellant's saddle. (Garden City, New York: Doubleday & Company, Inc.; 1966.) *** IP. 11I

The theory of our law and government,

as well as the facts in this case, speak against the court's opinion. Given the facts in this case the appellant could have made either a tort claim or a claim that his constitutional rights had been violated. He chose the latter course. In a tort claim the plaintiff has been either physically or mentally injured and seeks monetary damages in compensation for the wrong that has been done. The plaintiff making a constitutional claim charges that the Constitution has been abused and seeks to alter the law to ameliorate the abuse. Monetary awards are not at issue.

The appellant accepts the district court's definition of what the law is in this case. What is at issue here is what the law ought to be. The court's Order, *** states:

> ... As there is no federal statute of limitations for claims brought under 42 U.S.C. #1983, the Colorado statute of limitations for actions under federal statutes applies. ...

A review of 42 U.S.C. # 1983 leads to the

conclusion that Colorado statute cannot be applied in this case because it would violate the intent of the framers of 42 U.S.C. #1983. It reads:

> Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or imunities secured by the Constitution and laws, shall be liable to the person injured in an action of law, suit in equity, or other proper proceeding for redress. IP. 12I

Study of this quotation leads to the conclusion that state statutes of limitations cannot be used to deprive an individual citizen like the appellant of his right to due process guaranteed by the Fifth Amendment of the Constitution .... Given the court's opinion, this conclusion must be in error.

Given the court's opinion, the appellant's conclusion after reading 28 U.S.C. Section 1652 must also be in error.

> The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the Courts of the United States, in cases where they apply.

It is the appellant's belief that the Constitution takes precedence over the Acts of Congress. The Judiciary Act of 1789 gives the federal courts the authority to use the state law that applies within the jurisdiction of the court. The district court exercised that right in this case. This is the law. But, the law ought to be that rights guaranteed by the Constitution take precedence over Acts of Congress and the laws of the several states.

This does not mean that the appellant claims that 28 U.S.C. Section 1652 is unconstitutional. It is the argument of the appellant that when an individual citizen speaking pro se makes a claim for one or more rights guaranteed by the Constitution in a case where state actors are prominent defendants, it should be within the

discretionary powers of a district judge to waive technical points of the law, like statutes of limitations, to allow airing of the real argument and granting of appropriate relief. It should be kept in mind that the framers of the Constitution were primarily interested in developing an effective government. That this document did not Ip. 131 meet every conceivable rule of logic was unimportant to them. It did matter, however, that government work.

This unique relationship between the individual citizen and the national government was discussed at some length in the plaintiff's Memorandum Supporting A Motion Requesting Certification of Jurisdiction, Document 6, dated December 5, 1986, at pp. 6-9. The appellant adds here that the law as it is should remain in place, but it should also include assurances that the individual citizen will receive a minimal amount of assistance

in federal court in situations in which he is clearly the weaker party. It may not be clear that the appellant is the weaker party in this case. A hypothetical case using an extreme example may illustrate the point. B is a woman in her early teens who has recently conceived A. B decides to get rid of A. A would have few, if any, defenders in this case. It is the appellant's argument that the district judge should be A's advocate. At A's birth the court should pay B for her services, wish her well in the future, and then pay A's food, clothing, Ishelter, and educationI costs trrough age 22. A might be expected to return some or all of these costs after age 22.

There are many A's in our society. The poor, the homeless, those who are ill, are all A's. Each one should be taken under the protection of a court until he or she has become a productive, contributing member of our society. In this case the

appellant is an A asking for due process rather than food, clothing, shelter, and education.

Before leaving the topic of 42 U.S.C. #1983 (first introduced in this case by the attornies for the defendants!) the appellant Ip. 14I would like to add reference to a number of cases in which this section of the United States Code is referred to. These cases are:

Carey v. Piphus, 435 U.S. 237, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978);

Smith v. Wade, 461 U.S. 30, 103 S.Ct. 1652, 75 L.Ed.2d 632 (1983);

Newport v. Fact Concerts, Inc., 453 U.S. 247, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981);

Bivins v. Six Unknown Agents, 403 U.S. 388 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971);

Davis v. Passman, 439 U.S. 1113, 99 S.Ct. 1014, 59 L.Ed.2d 71 (1979); and

Carlson v. Green, 446 U.S. 14, 100 S.Ct. 1468, 64 L.Ed.2d 15 (1980).

The appellant expresses no opinion on these items. The sources available to the court of appeals, as well as to the attornies for the appellees, should give the full text of

each case. *** IP. 15I

To this point the argument assumes that the district judge exercised all the powers that he had, but given the rules he was unable to grant the plaintiff a trial of the case. It is assumed, for example, that pursuant to Rule 6 (b) of the Rules of Civil Procedure for the United States District Courts the honorable Sherman Finesilver could not enlarge the various statutes of limitations mentioned in his Order, dated February 27, 1987, document numbered: 8, to permit trial of the real issues in this case. Given this assumption, the judge was operating at 100% efficiency.

For the sake of argument assume that the judge has more powers and greater authority than he in fact exercised. Assume that he was operating at significantly less than 100% efficiency. His sub-conscious judgment may have been swayed without his conscious awareness. In the popular medias

of T. V. and motion pictures there is a prevailing bias against active participants in the Viet Nam conflict. The judge's conscious judgment may have been swayed by this sub-conscious bias. He may not even be aware that it exists.

The "V.C. Whore" episode of Miami Vice, and the movies Platoon and Lethal Weapon are indicative of this bigotry. In the "V.C. Whore" episode of Miami Vice, the "men" from Miami team up Ip. 16I with a former colonel in the North Viet Namese regular army, (now a high ranking officer in the secret police of the "Republic" of Viet Nam), to catch or kill a group of Viet Nam veterans who travel the world assassinating world leaders and prostitutes!!! The movie Platoon is devoid of a scene in which no one is killed. It climaxes when one American soldier kills another in cold blood!!! Lethal Weapon is about a group of sex perverted, drug adicted, high ranking Viet Nam veterans who operate a multi-

national drug ring to service greater Los Angeles, California. Even the "good guys" are veterans, one of whom claims the distinction of having killed a man at the age of 21 with a rifle at 1,000 yards. Few men could do this, even with the best modern equipment!!! These productions are indicative of a pervasive sub-conscious cultural milieu of bigotry that few groups based on race, religion, or gender would tolerate without protest.

*** Equal protection of the laws may not be possible in such a milieu.

Mr. Justice Frankfurter, speaking for the Supreme Court of the United States in Beauharnais v. Illinois, 343 U.S. 250, 72 S.Ct. 725, 96 L.Ed. 919 (1952) extended the protections afforded the individual under our libel laws to cover identifiable groups as well. The justice states that

> ... a man's job and his educational opportunities and the dignity accorded him may depend as much on the reputation of the racial and religious group to which he willynilly belongs, as on his own merits. ...

Since the original complaint, the appellant has claimed that his own merits may be clouded by association with Viet Nam veterans in general. Members of law school admission committees may be totally unaware of their negative responses to Viet Nam veterans. Federal judges may respond the same way. In either case their emotional responses may have been formed by fictional representations which have no basis in fact. In either case their one on one associations with actual veterans are probably limited. Few veterans have gone to law school and even fewer have become federal judges. Those with whom they would most likely come in contact are defendants in criminal proceedings. These would be the least desirable representatives of the Viet Nam veteran group.

The court should clearly understand this section of the argument. Misunderstanding is so easy. Law school admission committee members do not actively reject

Viet Nam veterans because they are veterans and federal judges do not disfavor them because the judges are operating an active conspiracy. The problem is that these people have been conditioned to associate a long list of undesirable qualities with veterans as a group which have no basis in fact. A significant part of the problem is that there is no physical contact between the elements in the equation. Through all the law school application processes the appellant has experienced he has spoken to one anonymous live human being on the telephone. Ip. 18I More than a year has elapsed since the first version of the original complaint was submitted to the district court. In that period the appellant has spoken to one live female Washington attorney who called to find out who the appellant's attorney was. She laughed on the indication that he would be speaking pro se.

The appellant is well aware of the fact that a number of decades ago the

academic admission process was abused when personal contact was allowed to influence admission decisions. The same was also true in the administration of justice. The present arrangement is equally abusive. It is the appellant's argument that the current arrangement strips Viet Nam veterans of their right to use the First Amendment as either sword or shield. Without protection against libel, they may not advocate their own cause. ***

IP. 22IILetter from Betsy Levin, Dean; University of Colorado, Boulder; School of Law; to Robert John Arko; dated April 15, 1983. The text has been omitted.I

IP. 23IILetter from Lewis and Clark College; Northwestern School of Law; to Robert John Arko; dated: January 20, 1984. The text has been omitted.I***

870727 Brief for Defendants-Appellees Law School Admission Council and Law School Admission Services, Inc.

IThe following excerpt is from the title page:I

Robert John Arko,

Plaintiff-Appellant,

-against-

The United States Air Force Reserve Officer Training Program; The School of Education, University of Colorado; The School of Law, University of Colorado; The Law School Admission Council; and The Law School Admission Services,

Defendants-Appellees,

and

The American Bar Association, and The Association of American Law Schools,

Defendants. ***

IP. 10I In their motion to dismiss, LSAC and LSAS argued that plaintiff's antitrust claim should have been dismissed as a matter of law because plaintiff had suffered no injury to those interests protected by the antitrust laws. Memorandum in Support of Motion to Dismiss, filed November 3, 1986, at 8. LSAC and LSAS continue to press that argument. Plaintiff is not entitled to sue for damages under the federal antitrust laws because his "business or property" were not injured when he was

denied admission to law school. *** Plaintiff was not necessarily entitled to be admitted to law school, and thus no cognizable property interest was harmed by the rejection of his application. *** Nor does the complaint allege that there is a threat of future harm to any interest that may be protected by a lp. 11I private suit for equitable relief under Clayton Act section 16, 15 U.S.C. section 26. ***

In response, plaintiff made no attempt below to establish that he was entitled to maintain an antitrust claim. On the contrary, plaintiff revealed how baseless the antitrust claim is by acknowledging that he had raised the issue "only in passing." Plaintiff's Opposing Memorandum, filed November 18,1986, at 11-12. None of the documents that plaintiff has submitted to the district court and to this Court has the slightest bearing on whether LSAC and LSAS injured plaintiff in violation of the antitrust laws. The letters attached to

plaintiff's second brief indicate only that plaintiff's applications were denied by two law schools. Plaintiff's constant refrain is that he was denied due process. Since plaintiff's antitrust claim cannot be maintained as a matter of law, plaintiff's due process claims should be measured only by the applicable two-year statute of limitations. *** IP. 12I

It is simply not the case that civil rights claims may never be time-barred. Congress clearly intended federal courts to look to state statutes of limitations to determine the timeliness of claims under 42 U.S.C. section 1983, and the Supreme Court has approved this "borrowing" of state statutes to fill in gaps in the federal law. *** Plaintiff is asking for an unprecedented extension of due process when he asks this Court for a personal exemption from the statutes of limitations.

B. No Bill of Attainder Is Involved in This Case.

Plaintiff's argument that the proceedings below are equivalent to a bill of attainder is meritless.

> A bill of attainder is a legislative act which inflicts punishment without a judicial trial.

*** The bills of attainder clause of article I, section 9 of the Constitution serves as a check on congressional power to single out the persons who will be burdened by federal statutes. *** Article I, section 10 of the Constitution imposes Ip. 131 a similar prohibition on state governments. No such legislative act was at issue in the district court, and plaintiff should not be permitted to raise this absurd contention for the first time on appeal. Indeed the history of the proceedings reflected in the record below reveals that the district court gave plaintiff every opportunity to submit papers and so-called "newly discovered evidence" to the judge.

Without doubt, plaintiff's claims were heard and decided in full accordance with the due process of law. ***

870806 Reply Brief of the Appellant

IP. 1I *** With regard to the appellees' section titled: Plaintiff's New Evidence; Ibid. at p. 7; it is not possible to know if the appellant's reputation has been abused by the family fude in question, by the fact that he is associated with other Viet Nam veterans, by the fact that he has a low grade-point average and low Law School Admission Test Scores, or by his association with some other unknown characteristic. Only due process can clearify this issue. If the appellant knew, for example, that his association with the family fude in question was the reason for his rejection by these educational programs, he would have no need for due process. A claim for other relief would be more appropriate. Ip. 2I ***

It is mandatory, however, that other

individuals who are in similar situations have a forum for due process of law. Similar complaints would be more difficult to make if all participants entering the schoolhouse door were governed by a written constitution applicable to the institution in which they are enrolled as students, where they work as teachers, or where they supervise as administrators. A written constitution with appropriate checks and balances should govern relations among students, faculty and administration from pre-school through post-graduate education. While a general constitution should apply to each level of education, each school should have the authority to amend the rules to account Ip. 3I for local needs. ***

In law school admissions the present system should be maintained in tact, with a few exceptions. Each applicant should be allowed to take the Law School Admission Test only once in each of three calendar years. After making unsuccessful applications

to at least ten schools during the three years the applicant should be permitted to take an alternate route. The minimum requirements for this alternate admissions program might include two years of military service, two years of work experience with more than one employer, and a M.A. degree. The alternate approach would culminate in a court proceeding in which the unsuccessful applicant must speak pro se. Opposing counsel would be third year law students enrolled in a course organized to encourage law students to become prosecutors. Retired federal judges would oversee these proceedings held in law school moot court rooms during term breaks. Federal rules of civil procedure, including Ip. 4I normal rights of appeal, would govern proceedings. Precedent would be governed by prior years' proceedings. The federal government and the various legal education systems would share the cost of administering this plan with the applicant paying a nominal fee.

At the same time, law schools should be encouraged to provide alternative approaches in legal education. Of the law school programs that the appellant has reviewed he is able to say that they are remarkably similar. Admission procedures, course offerings, and the professional background of the professors is uniform.[D] The best these organizations can say is that they accept applicants who will be successful in their programs. They should be required to say that their programs have helped train the most just members of our society.

The appellant brought his original complaint to court to encourage the appellees to improve their programs. To be rejected as often as the appellant has would be tragic if no good comes from these experiences. One officer, one teacher, or

---

[D] This was written before the District of Columbia School of Law, formerly the Antioch School of Law, came to the attention of the appellant.

one lawyer - more or less - is insignificant. In a democracy it is required that each individual work to improve the system when it is within his capabilities to do so. Within the context of this case tolling the various statutes of limitations would contribute toward improving the educational system in general, and legal education in particular.

The appellees' argument at pp. 10-11, Ibid., misses the point. The plaintiff-appellant is not suing for damages. He is not claiming that he was injured when he was denied admission to law school. He also does not claim that his business or property were injured Ip. 5I when he was denied admission to law school. What he does claim is that the appellees have developed a legal education system that routinly stretches the meaning of the term "due process" to the breaking point. They have done this by developing a system that is vertically integrated from the point of law

school admission testing through post-graduate certification and job placement. The appellees can point to no effective competing organization. The system is so non-competitive that no one is aware of it.

It may be true that a modern day supreme court has approved a "borrowing" of state statutes to fill in the gaps in federal law. But, was that the intent of the founding fathers? In the Articles of Confederation they had a constitution that was based on the notion that the source of the national authority was the collective will of the various state governments. The system self-destructed. Seventy-five years later the southern states took the same approach in forming the Confederate States of America. It did not survive childhood. The appellees now suggest that what could not be achieved with revolution or civil war can be codified into law through inconspicuous judicial review. The appellant objects!

The appellant may have made comments in his brief dated June 1, 1987 that stretch the meaning of the applicable phrases of the Constitution beyond acceptable limits. Nothing in the brief of the appellees, however, leads the appellant to retract one word regarding bills of attainder. Without due process no one could learn whether a legislative act played a part in the various decisions at issue in this case, or whether other non-legislative factors controlled these decisions; ***. IP. 6I The appellant continues to believe that each of the appellees had very good reasons for making each decision in question. But, the appellant has no documentary proof that this was the case. Consequently, bills of attainder remain real possibilities in this case. *** IP. 8I

Conclusion

The following quotation is taken from the appellees' brief dated July 27, 1987; at p. 11;

> ... None of the documents that plaintiff has submitted to the district court and to this Court has the slightest bearing on whether LSAC and LSAS injured plaintiff in violation of the antitrust laws. The letters attached to plaintiff's second brief indicate only that plaintiff's applications were denied by two law schools. ...

The following letters are submitted to this Court as evidence in direct rebuttal to this argument. The Court must conclude that the appellant does have an antitrust claim that has been timely filed against the American Bar Association, the Association of American Law Schools, the Law School Admission Council, and Law School Admission Services, Inc. The Court must also conclude that the appellant's experiences in the Air Force ROTC Program and the Student Teaching Program sponsored by the University of Colorado School of Education had a direct, negative impact on his various applications to the University of Colorado School of Law, as well as his applications to other law schools. ***

ILetters from 13 law schools are presented on pages 9 through 21 of this brief. Each letter is addressed to Robert John Arko. The paragraphs that follow give the name and location of the school submitting the letter, and its effective date. The page in this brief concludes each entry. The text of each letter has been omitted.

The University of New Mexico School of Law; Albuquerque, New Mexico; February 15, 1982; p. 9.

College of Law; The University of Wyoming; Laramie, Wyoming; March 5, 1982; p. 10.

Brigham Young University; J. Reuben Clark Law School; Provo, Utah; March 30, 1982; p. 11.

The University of Kansas School of Law; Lawrence, Kansas; April 5, 1982; p. 12.

Golden Gate University School of Law; San Francisco, California; April 12, 1982; p. 13.

The University of Arizona College of

Law; Tucson, Arizona; April 19, 1982; p. 14.

Arizona State University College of Law; Tempe, Arizona; April 20, 1982; p. 15.

University of Denver College of Law; Denver, Colorado; April 20, 1982; p. 16.

New York Law School; New York, New York; April 26, 1982; p. 17.

The University of Utah College of Law; Salt Lake City, Utah; April 30, 1982; p. 18.

Loyola Law School; Los Angeles, California; May 5, 1982; p. 19.

Creighton University School of Law; Omaha, Nebraska; May 7, 1982; p. 20.

University of Pittsburgh School of Law; Pittsburgh, Pennsylvania; May 14, 1982; p. 21.I

17870917 The Constitution of the United States of America

Article One, Section Eight

The Congress shall have Power ... To regulate Commerce ... among the several States, ... To ... fix the Standard of Weights and Measures; ... And To make all

Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article One, Section Nine

... No Bill of Attainder ... shall be passed. ...

Article One, Section Ten

No State shall ... pass any Bill of Attainder, ...

Article Three, Section One

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, ...

Article Three, Section Two

The judicial Power shall extend to all Cases, in Law and Equity, arising under this

Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; ... -to Controversies to which the United States shall be a Party; IandI ...-between Citizens of different States ... .

... In all other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. ...

Amendment One

Congress shall make no law ... abridging the freedom of speech, ... or the right ... to petition the Government for a redress of grievances.

Amendment Two

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment Five

No person shall be held to answer for

a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, ... nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; ... .

Amendment Nine

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment Fourteen, Section One

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws. ***

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Hutchins, Robert Maynard; ed. Great Books of the Western World; Volume 43 American State Papers, The Federalist, J. S. Mill. (Chicago, Illinois: William Benton, Publisher-Encyclopaedia Britannica, Inc.; 1952.) (Hereinafter cited as Hutchins, Great Books.) The Federalist, pp. 21-259 34-36

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Certificate of Mailing

I hereby certify that pursuant to Supreme Court Rule 28.5 (c) I have this 26th day of ~~August~~ September, 1988 mailed the original document or a true and correct copy of the original Petition and accompanying Joint Apprndix Prepared by the Appellant, three of each to a set, to:

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Robert John Arko

Supreme Court, U.S.
FILED
OCT 27 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-552

IN THE

Supreme Court Of The United States

October Term, 1988

ROBERT JOHN ARKO,

Petitioner,

v.

THE UNITED STATES DEPARTMENT OF THE AIR FORCE; THE SCHOOL OF EDUCATION, UNIVERSITY OF COLORADO; THE SCHOOL OF LAW, UNIVERSITY OF COLORADO; THE AMERICAN BAR ASSOCIATION; THE ASSOCIATION OF AMERICAN LAW SCHOOLS; THE LAW SCHOOL ADMISSION COUNCIL; and THE LAW SCHOOL ADMISSION SERVICES, INC.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS LAW SCHOOL ADMISSION COUNCIL AND LAW SCHOOL ADMISSION SERVICES, INC.

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QUESTIONS PRESENTED

1. Whether the petitioner's case presents an important question of federal law which has not, but must be, settled by this Court.

2. Whether the lower courts abused their discretion in disallowing petitioner's motion to have his case reheard.

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Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS LAW SCHOOL ADMISSION COUNCIL AND LAW SCHOOL ADMISSION SERVICES, INC.

OPINIONS BELOW

The District Court's order of February 27, 1987 is reported at 661 F. Supp. 31 (D. Colo. 1987). The order of the Court of Appeals affirming both the District Court's judgment of dismissal of February 27, 1987 and the order of May 11, 1987 is not yet officially reported but is reproduced on pages 1-5 of petitioner's appendix ("Pet. App.").

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner's claims are allegedly based on the Sherman Act, the Clayton Act, Article I, section 9, clause 3 of the United States Constitution and the Sixth Amendment.

STATEMENT OF THE CASE

After the District Court for the District of Colorado dismissed petitioner's case under Federal Rule of Civil Procedure 12(b)(6), and the Court of Appeals for the Tenth Circuit affirmed that dismissal and again rejected his two post-judgment motions, petitioner is now attempting to have his case heard by this Court in an effort to remedy the perceived harms he claims to have suffered over twenty years ago.

After graduation from the University of Colorado, petitioner took the Law School Admission Test ("LSAT") and applied unsuccessfully for admission to the University of Colorado Law School. He blames his rejection from that law school (and others) on the respondents in this case, including the Law School Admission Council ("LSAC") and the Law School Admission Services, Inc. ("LSAS")*, which are not-for-profit corporations that administer the LSAT and facilitate the admissions process for American and Canadian law schools. Although apparently first denied admission to law school in 1969 after his graduation from college, petitioner, a *pro se* litigant, waited some seventeen years later to file his complaint, which alleges the existence of a conspiracy to restrict the entry of Viet Nam veterans into the legal profession in violation of the "spirit" of the Sherman and Clayton Acts. (Pet. App. at 7).

The District Court, construing these facts in the light most favorable to the petitioner, found that petitioner had failed to state a claim upon which relief might be granted. It therefore

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* LSAC and LSAS have no parent companies, subsidiaries or affiliates, other than the other, to list pursuant to Rule 28.1.

granted respondents' motion to dismiss the complaint on February 27, 1987. On April 7 and April 24, 1987 petitioner filed two motions requesting relief from the judgment on the basis of what was claimed to be newly discovered evidence. The District Court found the evidence did not affect the prior judgment and rejected both motions in an order filed May 11, 1987. Petitioner then filed a notice of appeal on May 18, 1987. On February 23, 1988, the Court of Appeals affirmed the District Court's February 27, 1987 dismissal of the case and its order of May 11, 1987, finding that plaintiff's allegations did not state a federal cause of action and that the District Court had properly denied the motion for a rehearing.

REASONS FOR DENIAL OF THE WRIT

This case does not warrant review by this Court because it does not present any question of law deserving this Court's (or indeed any court's) attention. Moreover, the petitioner has failed to state any federal cause of action at all. In short, there is nothing to justify the grant of a writ of certiorari.

In addition, the rulings of the United States District Court of the District of Colorado and the United States Court of Appeals for the Tenth Circuit do not conflict with the rulings of this Court or another court of appeals on similar questions. In arriving at their decisions, these courts properly exercised their discretion and did not stray from the accepted course of judicial proceedings.

I. Petitioner's Case Does Not Involve Any Important Question of Federal Law.

Petitioner attempts to base his petition for a writ of certiorari on several federal questions that his case allegedly raises. However, none of his alleged federal questions -- namely, claims under the Sherman and the Clayton Acts, Article I, section 9, clause 3 of the United States Constitution and the Sixth Amendment -- has any foundation in law or fact. Petitioner's case

thus presents no important question of federal law that must be decided by this Court.

Petitioner alleged that LSAS and LSAC violated the spirit of the Sherman and Clayton Acts, but he has failed to prove that he has suffered any harm to those interests which the laws are intended to protect. Petitioner is not entitled to sue for damages under the federal antitrust laws because his "business or property" was not injured when he was denied admission to law school. *See* Clayton Act §4, 15 U.S.C. §15 (1982 and Supp. IV 1986). Admission to law school is not considered an entitlement; therefore no cognizable property interest was harmed when petitioner's applications were rejected. *See Selman v. Harvard Medical School*, 494 F. Supp. 603, 619-21 (S.D.N.Y.) (civil rights and antitrust claims), *aff'd mem.*, 636 F.2d 1204 (2d Cir. 1980). Furthermore, he fails to allege that future harm is possible to any interest that may be protected by a private suit for equitable relief under the Clayton Act. 15 U.S.C. §26 (1982 and Supp. IV 1986); *see Treasure Valley Potato Bargaining Ass'n v. Ore-Ida Foods*, 497 F.2d 203, 217-18 (9th Cir.), *cert. denied*, 419 U.S. 999 (1974). Finally, petitioner himself acknowledged in the District Court that his antitrust claim was meritless when he stated that it was raised only "in passing". Plaintiff's Opposing Memorandum at 11-12, *Arko v. United States Dep't of Air Force*, No. 86-F-1818 (D. Colo. Nov. 18, 1986) (partially reprinted in Pet. App. at 23, 30).

Equally meritless are petitioner's contentions that the proceedings below were the equivalent of a bill of attainder under Article I of the Constitution. "A bill of attainder is a legislative act which inflicts punishment without a judicial trial." *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 323 (1867). It is clear from the record of the proceedings below, however, that no such legislative act was at issue in the District Court. Moreover, contrary to petitioner's allegations, the proceedings in the courts below afforded him every opportunity to have his claims heard and decided in full accordance with due process of law. The Court of Appeals was thus correct in rejecting this argument.

Nor does petitioner's argument that his Sixth Amendment right to counsel was violated in the District Court proceedings merit review by this Court. The Sixth Amendment provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right... to have the assistance of counsel for his defense.

The purpose of the Sixth Amendment is "to ensure that criminal defendants receive a fair trial," *Strickland v. Washington*, 466 U.S. 668, 689 (1984); it does not require counsel for all civil litigants. In this case petitioner chose to represent himself rather than to retain counsel; LSAC and LSAS were in no way responsible for his choice. Petitioner cannot now claim that this right to counsel has been violated.

Even if all of petitioner's allegations were accepted as true, petitioner has failed to raise any significant federal question that merits review by this Court.

II. Petitioner Was Not Entitled to Relief from the Judgment Since the District Court and the Court of Appeals Acted Within the Scope of Their Discretion.

The District Court did not abuse its discretion when it declined to grant a new trial or relief from the judgment upon the petitioner's attempted introduction of new evidence. The petitioner's two post-judgment motions under Federal Rule of Civil Procedure 60(b) were addressed to the sound discretion of the District Court. The Court of Appeals was correct in not overturning the decision of the lower court, since it had not abused its discretion. *See* 7 J. Moore & J. Lucas, *Moore's Federal Practice* ¶60.30[1] (2d ed. 1987).

The evidence submitted by petitioner consisted of no more than several letters describing a family dispute involving the administration of a deceased relative's estate. Even if admissible, the evidence was not relevant to petitioner's case and could not conceivably have changed the outcome of the litigation. *See Marshall's United States Auto Supply v. Cashman*, 111 F.2d 140,

142 (10th Cir.), *cert. denied*, 311 U.S. 667 (1940). Moreover, the new "evidence" was not sufficient for the District Court to grant relief from the judgment under Federal Rule of Civil Procedure 60(b). The Court of Appeals thus made the only decision available to it when it affirmed the District Court's ruling.

CONCLUSION

After several years of litigation on utterly spurious claims, petitioner has failed to present any important question of federal law that must be decided by this Court. Indeed, petitioner has failed to raise any federal question whatsoever, and thus by definition this Court has nothing to decide. Moreover, in dismissing his motion for a rehearing or relief from the judgment, the lower courts acted within their sound discretion in accordance with accepted judicial procedure. Since petitioner has repeatedly failed to demonstrate that he is entitled to any relief on his unusual claims, several years of manifestly meritless litigation should be terminated. Accordingly, petitioner's petition for a writ of certiorari should be denied.

Dated: October 26, 1988

Respectfully submitted,

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